

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

1:20-cr-1370-KWR

JULIAN GARCIA III,

Defendant.

ORDER COMPELLING DISCLOSURE OF EXPERT WRITTEN SUMMARY

THIS MATTER comes before the Court upon the Government's Eighth Motion in Limine to exclude testimony by Defendant's proposed expert witness or in the alternative to require Defendant's prompt compliance with Rule 16(b)(1)(C) (**Doc. 67**). The Government asserts that Defendant failed to disclose a written summary of his expert's testimony as required under Rule 16(b)(1)(C). The Government requests that the Court exclude the proposed expert testimony of David Torres, or alternatively compel Defendant to disclose a written summary of the expert testimony.

Federal Rule Criminal Procedure 16(b)(1)(C) provides:

The defendant must, at the government's request, give to the government a written summary of any testimony that the defendant intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial...

...

This summary must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.

A disclosure comporting with Rule 16(b)(1)(C) "should cover not only written and oral reports, tests, reports, and investigations, but any information that might be recognized as a legitimate

basis for an opinion under Federal Rule of Evidence 703, including opinions of other experts.” Advisory Committee Notes (1993 Amendment). The purpose of the rule is to “minimize surprise that often results from unexpected expert testimony, reduce the need for continuances, and to provide the opponent with a fair opportunity to test the merit of the expert’s testimony through focused cross-examination.” *Id.*

The Court has reviewed the expert notice (**Doc. 36**) and agrees that it is deficient and does not give a summary of the proposed expert testimony as required by Rule 16(b)(1)(C).

Trial is set on September 13, 2021, and there is a pretrial motions hearing on August 19, 2021. The expert notice (**Doc. 36**) was filed in November 2020, and the Government represents it has repeatedly requested a written summary from Defendant. In order to give the Government adequate time to prepare its case, the Court will order Defendant to disclose a written summary of his proposed expert David Torres as contemplated under Rule 16(b)(1)(C) by **August 18, 2021**. At the pretrial motions hearing on **August 19, 2021**, the parties may address whether any other remedies are necessary or appropriate. Defendant’s compliance with this order may bear on whether any further remedy is necessary.

IT IS SO ORDERED.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE